

REMARKS

Applicants submit this Reply in response to the Final Office Action, mailed June 11, 2009. Before this response, claims 23-44 were pending, of which claims 23 and 33 were independent. By this response, Applicants propose to amend claims 23 and 33. Support for these amendments can be found in the originally-filed specification, at, for example, page 10, lines 7-15. No new matter has been added. As a result, claims 23-44 are currently pending, of which claims 23 and 33 are independent.

In the Final Office Action, the Examiner rejected claims 23-24, 32-34, and 42 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2004/0037230 ("Kroboth").¹ In addition, the Examiner identified allowable subject matter in claims 25-31, 35-41, and 43-44 and objected to these claims for being dependent on rejected base claims. Applicants respectfully traverse the pending rejection and request reconsideration of the present application in view of the foregoing claim amendments and the following remarks.

Rejection of Claims 23-24, 32-34, and 42 Under 35 U.S.C. § 102(e)

Applicants respectfully traverse the 35 U.S.C. § 102(e) rejections of claims 22-24, 32-34, and 42 as being anticipated by Kroboth. In order to properly establish an anticipation rejection under 35 U.S.C. § 102(e), every element of the claims at issue must be found in the applied prior-art reference, either expressly or under principles of inherency. Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." See M.P.E.P. § 2131, quoting *Richardson v. Suzuki*

¹ The Final Office Action contains a number of statements characterizing the Applicants' disclosure, including the claims, and the related art. Regardless of whether any such statement is specifically addressed herein, Applicants decline to automatically subscribe to any statement or characterization in the Final Office Action.

Motor Co., 868 F.2d 1126, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). In this case, Kroboth fails to teach or suggest every element of Applicants' claimed invention. More specifically, Kroboth does not disclose or suggest at least Applicants' claimed "incrementally generating traffic quantum representative of said traffic at an evaluation module independent from a plurality of exchanges and nodes of the communications network, based on receiving a measured traffic volume of said incoming traffic directed towards a given destination as an input directly from the at least one exchange," as recited in Applicants' representative independent claim 23, as proposed to be amended.

Kroboth generally discloses "a system displaying heterogeneous measurement data, including collecting heterogeneous scalar measurement data from a plurality of devices connected to the network, normalizing the collected heterogeneous scalar measurement data . . . and displaying the . . . heterogeneous scalar measurement data." Kroboth, ¶ [0005]. To this end, Kroboth discloses that "[d]ata collectors 710 . . . are connected to network 700, and they, as a whole, collect heterogeneous scalar measurement data from [network] devices" *Id.* at ¶ [0018]. Kroboth further discloses "[t]hreshold organizer 702 is also connected to network 700, receives the collected data from the data collectors, if a collector is necessary to receive the network device scalar measurement, and normalizes the collected heterogeneous scalar measurement data" *Id.*

As shown above, Kroboth teaches a system that displays heterogeneous measurement data by first using data collectors to collect such heterogeneous measurement data. See Kroboth, ¶ [0018]. Kroboth further discloses that after the data collectors collect the data, a separate device, *i.e.*, the threshold organizer, is used to

normalize the collected data so that it can be displayed in a single display. *Id.*; see also Figs. 1-2. By contrast, claim 23 requires that the claimed evaluation module "incrementally generat[es] traffic quantum[s] representative of said traffic . . . based on receiving a measured traffic volume . . . as an input directly from the at least one exchange." (emphasis added). Accordingly, Applicants submit that Kroboth fails to teach or suggest "incrementally generating traffic quantum[s] representative of said traffic at an evaluation module independent from a plurality of exchanges and nodes of the communications network, based on receiving a measured traffic volume of said incoming traffic directed towards a given destination as an input directly from the at least one exchange," as recited by independent claim 23, as proposed to be amended.

Applicants further note that although Kroboth discloses that "threshold organizer . . . receives the collected data from the collector, if a collector is necessary to receive the network device scalar measurement," Kroboth, ¶ [0018], it still does not teach or suggest "incrementally generating traffic quantum[s] representative of said traffic at an evaluation module independent from a plurality of exchanges and nodes of the communications network, based on receiving a measured traffic volume of said incoming traffic directed towards a given destination as an input directly from the at least one exchange," as recited by amended independent claim 23. More specifically, instead of disclosing that the threshold organizer receives data collected from the network devices directly, Applicants submit that this disclosure of Kroboth can only be directed to situations where an administrator does not wish to collect measurement data from a network device. This is so because Kroboth contains no disclosure that the threshold organizer is connected directly to the network devices.

For example, Applicants note that Kroboth discloses that the data collectors, rather than the threshold organizer, collect measurement data. See, e.g., Kroboth, ¶ [0018]; ¶ [0019]; Fig. 1; Fig. 2. Indeed, Kroboth discloses that data collectors “interact with one or more network devices,” *id.* at ¶ [0018], and “are connected to router 738, memory 740, network element [NE] 742, [and the other network devices],” *id.* at ¶ [0019], while Kroboth only discloses threshold organizer as “connected to network 700,” *id.* at ¶ [0018], and as “being connected to data collectors 710 and display system 712 via network 700.” *Id.* at ¶ [0019].

Moreover, Kroboth specifically discloses elsewhere that network administrators may choose to monitor only some of the network devices found in a given network. See, e.g., Kroboth, ¶ [0016] (describing “a network [that] contains a PC and several heterogeneous network devices,” wherein an administrator only wants to monitor one of those network devices, a router). Applicants advise that in these situations, a data collector would not be necessary to receive scalar measurements from any network device that is different from the monitored network device. In other words, no data collector would reasonably exist in this situation for the network devices that were not monitored. Accordingly, one of ordinary skill in the art would interpret Kroboth’s disclosure that “threshold organizer . . . receives the collected data from the collector, if a collector is necessary to receive the network device scalar measurement,” as only referring to situations where an administrator does not wish to collect measurement data from a network device. Therefore, Kroboth does not teach or suggest “incrementally generating traffic quantum representative of said traffic at an evaluation module independent from a plurality of exchanges and nodes of the communications

network, based on receiving a measured traffic volume of said incoming traffic directed towards a given destination as an input directly from the at least one exchange," as recited in Applicants' independent claims 23, as proposed to be amended.

Independent claim 33, although different in scope from claim 23, contains similar recitations, which Kroboth likewise fails to teach or suggest. Accordingly, because Kroboth does not disclose each and every element of claims 23 and 33, it cannot anticipate these claims. Claims 24, 32, 34, and 42 depend from one of allowable independent claims 23 or 33 and should be allowable at least due to their dependence from an allowable base claim. Therefore, for at least these reasons, the Examiner should withdraw the 35 U.S.C. § 102(e) rejection of claims 23-24, 32-34, and 42.

Allowable Subject Matter

Applicants acknowledge with appreciation the Examiner's indication that claims 25-31, 35-41, and 43-44 are drawn to allowable subject matter. For the foregoing reasons demonstrating the allowability of all the pending claims over the rejection of record, Applicants respectfully decline to amend claims 25-31, 35-41, and 43-44 at this time.

Conclusion

Applicants respectfully request that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 23-44 in condition for allowance. Applicants submit that the proposed amendments of claims 23 and 33 do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were either earlier claimed or inherent in

the claims as examined. Therefore, this Amendment should allow for immediate action by the Examiner.

Furthermore, Applicants respectfully point out that the final action by the Examiner presented some new arguments as to the application of the art against Applicants' invention. It is respectfully submitted that the entering of the Amendment would allow the Applicants to reply to the final rejections and place the application in condition for allowance.

Finally, Applicants submit that the entry of the amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

In view of the foregoing remarks, Applicants submit that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicants therefore request the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.


Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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Dated: September 3, 2009

By: _____


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